

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

MFA.No. 1106 OF 2000()

OP.15/1998 OF FAMILY COURT, THRISSUR

APPELLANT/RESPONDENT :

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1. DHARMARAJAN, AGED 52 YEARS,
S/O. VADASSERY RAMANKUTTY,
PARAKADY DESOM, ELAVALLY VILLAGE,
CHAVAKKAD TALUK.

BY ADV. SRI.RAJIT

RESPONDENTS/PETITIONERS:

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1. PRASANNA, AGED 49 YEARS,
D/O. PANNARAMBIL PONNAN,
THOIKAVU DESOM, VENDIDURG AMSOM,
CHAVAKKAD, THALUK.
 2. MURUGADAS, AGED 24 YEARS,
S/O. APPELLANT & 1ST RESPONDENT, DO.
 3. SREEKRISHNADAS @ RAJADAS, AGED 22 YEARS, DO.

BY ADV. SRI.R.RAJESH KORMATH
SMT.PREETHY KARUNAKARAN
SRI.ANISH S.AMBADY
SMT.BIJIMOL JOSE
SMT.MEENA.A.
SMT.M.R.MINI
SRI.V.S.ROBIN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 09/02/2007, THE COURT ON THE SAME DAY, DELIVERED THE
FOLLOWING:

P.R. RAMAN & SIRI JAGAN, JJ.

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M.F.A. NO. 1106 OF 2000

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DATED THIS, THE 9TH DAY OF FEBRUARY, 2007

J U D G M E N T

Raman, J.

Appellant was the respondent in O.P. 15/1998 on the file of the Family Court, Thrissur. The said original petition was filed seeking partition of the plaint schedule immovable properties. Petitioners were the wife and children of the appellant herein. It was their contention that the plaint schedule items were purchased in the joint names of the parties as per Document NO. 317/77 of Chavakkad Sub Registry, that the property was purchased out of the funds raised by the first petitioner by selling her gold ornaments which were given to her at the time of her marriage, that subsequent to the purchase the the petitioners and the respondent were residing together and were in joint possession of the same, that while so the respondent man-handled the wife which lead to a police complaint and thereafter he shifted his residence to his ancestral house. Subsequently, petitioners were evicted from the petition schedule property and they were not being given profits from the properties, that they are not willing to

continue the co-ownership of the properties, that a registered lawyer notice was sent to the respondent calling upon him to partition the petition schedule properties to which he sent a reply stating untenable contentions and hence the suit was instituted for partition. The petitioners claimed 3/4 share in the property and mesne profits.

2. The respondent (appellant herein) contended that the funds for purchase of the property was sent by him while he was abroad through the wife of RW.2, who is his friend, that the property absolutely belonged to the respondent and hence the plaint schedule properties are not partible.

3. The only evidence let in by the respondent to support his contention that the properties were purchased out of his own funds was Ext.X1 document and the oral testimony of RW.2, besides his own testimony as RW.1. The court below after considering the evidence in the case found that Ext.X1 in no way help the respondent. We have also gone through Ext.X1 and we are in full agreement with the finding of the court below in this regard. Only paltry amounts were deposited in the Indian Overseas Bank as evidenced by Ext.X1. The suit property is having an extent of 41 3/4 cents and a building thereon. The sale consideration shown in the document is Rs. 40,000/-. The court below considered the evidence of RW1 in this regard. Onus is on the appellant to prove that he expended

money from his own earnings for purchase of the property. But he could not discharge such liability by adducing satisfactory evidence in the matter. We have also gone through the judgment under appeal and also the materials placed on record and we do not find any reason to interfere with the judgment rendered by the court below. The findings are based on materials on record and in such circumstances, there is no merit in this appeal. It is accordingly dismissed.

P.R. RAMAN,
JUDGE.

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